

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Petition to Redefine Certain Rural	)	DA 04-2191
Telephone Company Service Areas	)	
In the State of Wisconsin	)	

**REPLY COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in the proceeding on the American Cellular Corporation (ACC) petition requesting FCC concurrence with the Wisconsin Public Service Commission's (Wisconsin PSC) proposal to redefine the service areas of certain Wisconsin rural telephone companies.<sup>1</sup>

OPASTCO is a national trade association representing more than 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO's members are rural telephone companies as

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<sup>1</sup>*The Wireline Competition Bureau Seeks Comment on Petition to Redefine Certain Rural Telephone Company Service Areas in the State of Wisconsin*, CC Docket No. 96-45, Public Notice, DA 04-2191 (rel. July 21, 2004).

defined in 47 U.S.C. §153(37). In addition, they are all eligible telecommunications carriers (ETCs) in their respective service areas.

OPASTCO agrees with commenters who have urged the Commission to stay consideration of ACC's petition pending the resolution of the proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. However, if the Commission deems it necessary to address the issues contained within the petition prior to the resolution of this related proceeding, then it should reject the Wisconsin PSC's proposal to fragment the twenty rural ILEC study areas, since the petition fails to provide a compelling rationale for such an action.

## **II. COMMENTS**

On February 27, 2004, the Federal-State Joint Board on Universal Service issued a *Recommended Decision* concerning the FCC's rules regarding high-cost universal service support and the process for designating ETCs.<sup>2</sup> The Commission has recently issued a Notice of Proposed Rulemaking seeking comment on this *Recommended Decision*.<sup>3</sup> Comments have already been filed and reply comments are due shortly. It is quite possible that, as a result of this proceeding, there will be some changes in the way in which competitive ETCs are designated, and in the level of support that they receive.<sup>4</sup>

Commenters in this proceeding have recommended that until the issues being considered in the portability proceeding are resolved, the Commission should stay

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<sup>2</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257 (2004).

<sup>3</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 04-127 (rel. June 8, 2004).

<sup>4</sup> See, Citizens Telecommunications Company of New York (Citizens) Comments in CC Docket No. 96-45 (filed June 21, 2004), p. 13.

consideration of the proposed service area redefinition addressed in ACC's petition.<sup>5</sup>

While key policies related to ETC designations are currently under review, it remains unclear how the Commission should evaluate whether or not the Wisconsin PSC's proposed redefinition of multiple rural telephone company service areas would serve the public interest. Thus, a stay on the review of ACC's petition is the most reasonable approach for the FCC to take at this time.

However, if the Commission deems it necessary to address the Wisconsin PSC's redefinition proposal prior to the resolution of the portability proceeding, then it should reject the proposal to fragment the twenty rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action. Service area redefinitions are not a necessary component of the Wisconsin PSC's designation of ACC as an ETC, as claimed in the petition.<sup>6</sup> Moreover, the redefinition of the twenty rural service areas so as to facilitate financially supported competition distorts the intended purposes of the High-Cost universal service program.

In its petition, ACC requests FCC concurrence with the Wisconsin PSC's proposal to redefine these rural telephone company service areas in a manner that conforms to its licensed service area, so that the provisions of Section 214(e) of the

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<sup>5</sup> CenturyTel, Inc. Comments, pp. 8-9; Wisconsin State Telecommunications Association-ILEC Division (WSTA) Comments, p. 9. Similar recommendations have been made in relation to the Commission's consideration of service area redefinitions for twelve rural telephone companies in Minnesota. *See*, CenturyTel, Inc. Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 7-8; Citizens Telecommunications Company of Minnesota, Inc. and Frontier Communications of Minnesota, Inc. Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 1-2, 6; Minnesota Independent Coalition Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 10-11; United States Telecom Association Comments in CC Docket No. 96-45 (filed Aug. 26, 2003), pp. 3-4; OPASTCO Reply Comments in CC Docket No. 96-45 (filed Sept. 9, 2003), p. 3..

<sup>6</sup> *Petition of American Cellular Corp. for Agreement with Redefinition of Service Area Requirement for Certain Rural Telephone Company Study Areas in the State of Wisconsin*, CC Docket No. 96-45, p. 4 (filed July 16, 2004) (ACC Petition).

Telecommunications Act of 1996 (the 1996 Act, the Act) would be met.<sup>7</sup> This would require service area definitions at both the wire center level and – for fourteen of the rural telephone companies – below the wire center level.<sup>8</sup>

As an initial matter, the Commission should reject the Wisconsin PSC's proposal to make service area redefinitions below the wire center level, since this was disallowed by the FCC in its recent *Highland Cellular* ETC designation decision.<sup>9</sup> As the Commission correctly determined:

[M]aking designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest. In particular, we conclude, that prior to designating an additional ETC in a rural company's service area, the competitor must commit to provide the supported services to customers throughout a minimum geographic area.<sup>10</sup>

The FCC went on to state that approving an ETC application for areas below the wire center level would more readily enable the designated carrier to relinquish such status at a later date. Because consumers in rural areas tend to have fewer competitive alternatives, these consumers are more likely to be harmed should carriers relinquish their ETC designation.<sup>11</sup> Thus, the Wisconsin PSC's conditional approval of fourteen service area

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<sup>7</sup> *Ibid.*, p. 9. Section 214(e)(1)(A) requires that in order for a carrier to be designated as an ETC, it must be able to offer all of the services supported by federal universal service support throughout the service area for which such designation is received.

<sup>8</sup> *Id.*, pp. 5-6. *See also*, WSTA Comments, p. 2.

<sup>9</sup> *See*, Frontier Communications of Wisconsin LLC, Frontier Communications of Mondovi LLC, and Frontier Communications – St. Croix LLC (Frontier) Comments, pp. 3-4; TDS Telecommunications Corp. (TDS) Comments, pp. 2-3; WSTA Comments, pp. 7-9.

<sup>10</sup> *Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum and Order, 19 FCC Rcd 6422, 6438, para. 33 (2004) (*Highland Cellular*).

<sup>11</sup> *Id.* *See also*, TDS Comments, p. 3.

redefinitions below the wire center level cannot reasonably be viewed as serving the public interest.

Moreover, even service area redefinitions at the wire center level are unnecessary since ACC has the ability to provide service both inside and outside of its licensed service area, should it so choose. CenturyTel correctly indicates that ACC can serve the entirety of the twenty rural telephone company study areas – including those portions that extend beyond its licensed territory – through a combination of its own facilities, roaming agreements, and resale of other carriers’ services, as permitted in Section 214(e)(1)(A) of the 1996 Act.<sup>12</sup> The FCC has also previously noted that a wireless ETC could “supplement its facilities-based service with services provided via resale”<sup>13</sup> so as to extend service to those portions of a rural telephone company’s study area not within the wireless carrier’s license area.

Thus, it is clear that ACC is not incapable of serving the segments of the twenty rural study areas that fall outside of the area for which it has a wireless spectrum license. Rather, ACC has simply made a business decision to deny service to these areas.<sup>14</sup> It is entirely at odds with the principles of universal service to allow a competitive ETC to exercise a preference to ignore portions of a rural telephone company’s study area that it deems unattractive or inconvenient to serve.

Ultimately, the fundamental flaw of both ACC’s petition and the Wisconsin

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<sup>12</sup> CenturyTel Comments, pp. 6-7.

<sup>13</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8881-8882, para. 189 (1997).

<sup>14</sup> *See*, WSTA Comments, p. 3.

PSC's ETC designation for ACC is that they rest primarily on vague generalities regarding the generic benefits of competition. Both presuppose that the designation of ACC as an ETC and the alignment of the identified rural telephone company service areas with the cellular license area are in the public interest because it will "foster competition."<sup>15</sup> However, Congress did not intend for competition, in and of itself, to be used as the basis for designating additional ETCs in rural telephone company study areas or for facilitating their receipt of high-cost universal service support. As a result, if the Commission deems it necessary to act at this time, then it should reject the Wisconsin PSC's proposal to fragment the study areas of the twenty rural telephone companies identified in the petition.

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<sup>15</sup> ACC Petition, pp. 11. *See also, Wisconsin Public Service Commission, Application of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Docket No. 8206-TI-100, pp. 8-9 (June 18, 2004).

### III. CONCLUSION

For the foregoing reasons, OPASTCO urges the Commission to stay consideration of ACC's petition pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. However, if the Commission deems it necessary to address the petition prior to the resolution of this related proceeding, then it should reject the Wisconsin PSC's proposal to fragment the twenty rural telephone company study areas, since the petition fails to provide a compelling rationale for such an action.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
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August 18, 2004

## **CERTIFICATE OF SERVICE**

I, Jeffrey W. Smith, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 18<sup>th</sup> day of August, 2004, to those listed on the attached list.

By: /s/ Jeffrey W. Smith  
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